Supreme Court, U.S.
FILED
AUG 6 1993
OFFICE OF THE CLERK

121

No. ___ Original

In The

Supreme Court of the United States

October Term, 1993

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, et al.,

Defendants.

MOTION TO FILE COMPLAINT, COMPLAINT AND BRIEF IN SUPPORT OF MOTION AND COMPLAINT

RICHARD P. IEYOUB
Attorney General
State of Louisiana

JACK E. YELVERTON
First Assistant Attorney General
State of Louisiana

E. KAY KIRKPATRICK
Assistant Attorney General
State of Louisiana

GARY L. KEYSER
Assistant Attorney General
State of Louisiana
Post Office Box 94095
Baton Rouge, Louisiana
70804-9095
PH: 504-342-7900
FAX: 504-342-7901

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

28 pp

INDEX

	Page
Motion for Leave to File Complaint	1
Complaint	7
Brief in Support of Motion	18
Opening Statement	18
I. Jurisdiction of Suits between States	18
II. The Motion for Leave to File Should Be Granted	19
III. Power to Stay	20

CITATIONS

Page

CASES:

California v. Arizona, 440 U.S. 59, 99 S.Ct. 919, 59 L.Ed.2d 144 (1979) 19, 20

Ex Parte Republic of Peru, 318 U.S. 578, 87 L.Ed. 1014, 63 S.Ct. 793 (1943) 20

Florida v. Georgia, 17 How. 478 (1855) 19

Houston v. Thomas, 937 F.2d 247 (5th Cir.1991) 3

Houston, et al. v. Thomas, et al., No. W86-0080(B) 2, 6, 11, 15, 16

Houston, et al. v. Thomas, et al., 984 F.2d 642 (5th Cir.1993) 4

Landis v. North American Company, 299 U.S. 248, 81 L.Ed. 159, 57 S.Ct. 163 (1936) 20

Louisiana v. Mississippi, 202 U.S. 1, 50 L.Ed. 913, 26 S.Ct. 408 (1906) 19

Louisiana v. Mississippi, 282 U.S. 458, 75 L.Ed. 459, 51 S.Ct. 197 (1931) 19

Louisiana v. Mississippi, 384 U.S. 24, 16 L.Ed. 2d 330, 86 S.Ct. 1250 (1966) 19

Louisiana v. Mississippi, 466 U.S. 96, 80 L.Ed. 2d 74, 104 S.Ct. 1645 (1984) 21

Mississippi, et al. v. Louisiana, et al., No. 91-1158, 112 S.Ct. 1472 (1992) 4

Mississippi, et al. v. Louisiana, et al., ___ U.S. ___, 113 S.Ct. 549, 121 L.Ed.2d 466 (1992) 4, 19

Oklahoma v. Texas, 258 U.S. 574, 66 L.Ed. 771, 42 S.Ct. 409 (1922) 19

CITATIONS – Continued

Page

CONSTITUTION AND STATUTES:

Article IV, Section 8, Constitution of Louisiana 1, 7

Art. III, Section 2, Clause 2, Constitution of the United States 3, 8, 18

Title 28, U.S.C.A., Section 1251(a) 3, 8, 18, 19, 20

Title 28, U.S.C.A., Section 1651(a) 20

Act of Congress approved April 8, 1812, Chapter 50, U. S. Statutes at Large, Vol. 2, p. 701 ..2, 3, 8, 12

Act of Congress approved April 14, 1812, Chapter 57, U. S. Statutes at Large, Vol. 2, p. 708 9

Act of Congress approved March 1, 1817, Chapter 23, U.S. Statutes at Large, Vol. 3, p. 348 9

Treaty of Peace Between the United States and Great Britain, September 3, 1783 14

APPENDIX

EXHIBITS:

"A" –

Order of the United States District Court, Southern District of Mississippi, Western Division, dated June 11, 1993 ..... App. 1

No. ___ Original

In The

Supreme Court of the United States

October Term, 1993

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, et al.,

Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Louisiana, appearing herein through the Honorable Richard P. Ieyoub, its Attorney General, acting in pursuance of the authority and powers vested in him by Article IV, Section 8 of the Louisiana Constitution, respectfully shows the Court that this filing represents its third motion for leave to file a bill of complaint in this matter, and states that:

1. A portion of the boundary between the States of Louisiana and Mississippi common to the Parish of East Carroll, Louisiana, and the County of Issaquena, Mississippi, is in dispute.

2. This boundary dispute between the States is subject to the exclusive original jurisdiction of the Supreme Court of the United States.

3. An action is presently and has for a number of years been pending in the United States District Court, Western Division of the Southern District of Mississippi, entitled *Julia Donelson Houston, et al, vs. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B), wherein complainants in said civil action are claiming ownership of a portion of lands involved in this boundary dispute, contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Louisiana under its inherent sovereignty.

4. The above referenced action is styled as a Complaint To Remove Cloud and identifies numerous plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, as against numerous defendants as residents and domiciliaries of the State of Louisiana. In fact, the land claimed by plaintiffs is within the historic boundaries of Louisiana and a part of the Louisiana mainland.

5. Complainants in the district court recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi.

6. Complainants allege Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

7. The State of Louisiana and the Lake Providence Port Commission, a political subdivision of the state, intervened in the federal district court action in June, 1987, asserting that their rights arise under the Constitution of the United States and an Act of Congress approved April 8, 1812, admitting the State of Louisiana into the Union of the United States of America, which act

is found at 2 Stat 701 (U.S. Statutes at Large, Vol. 2, chap. 50, p. 701).

8. Thereafter on September 15, 1988, the State of Louisiana moved for leave to file a bill of complaint pursuant to Article III, Section 2 of the United States Constitution and 28 U.S.C. § 1251(a), granting to this Court original and exclusive jurisdiction of all controversies between two states. On December 12, 1988, this Court denied the motion of Louisiana to file an original action in No. 114, Original.

9. On February 2, 1989, the State of Louisiana filed a petition for re-hearing on its motion to file a bill of complaint, and an alternative motion to file a separate new bill of complaint. On February 27, 1989, this Court denied the petition for re-hearing and alternative motion to file a separate complaint in No. 114, Original.

10. Following these actions, Louisiana was left with no alternative but a trial in the district court. Subsequently, the case was completely tried in a bifurcated trial in the federal district court in Mississippi in two separate trial fixings, with the trial court rendering two separate bench opinions and two separate judgments. Thereafter, the Fifth Circuit reversed and rendered, entering judgment in favor of the State of Louisiana and the Lake Providence Port Commission, an entity and political subdivision of the State.[1]

11. This Court granted the petition for Writ of Certiorari of the State of Mississippi and the original

---

[1] Houston v. Thomas, 937 F.2d 247 (5th Cir.1991)

complainants on March 23, 1992[2]. The case was argued November 9, 1992, and decided December 14, 1992,[3] the Court remanding it to the Court of Appeals with regard to further proceedings as to claims of title. The Court made no ruling on the merits, except as to the jurisdictional issue, and made no mention of the fact that most of the riparian lands at issue on the Louisiana side of the river had been deeded prior to the trial by quit claim of the Louisiana riparians to the Lake Providence Port Commission, an entity and political subdivision of the State of Louisiana. Thus, the majority of the lands at issue are owned by Louisiana, and as between the State of Louisiana and the State of Mississippi, the District Court has no jurisdiction to hear the case remanded to it by the Court of Appeals on February 12, 1993.[4] Some of the lands remain in private ownership, and both the state-owned and privately-owned riparian lands on the Louisiana side of the river are claimed by the original complainants. The boundary remains unresolved.

12. It will do no good for the district court to attempt to adjudicate a boundary involving the claims of the private parties, as suggested by this Court, and the district court recognized this in a June 10, 1993, status conference resulting in the order attached as Exhibit "A". It quite correctly stated, in part, that:

---

[2] Mississippi, et al. v. Louisiana, et al., No. 91-1158, 112 S.Ct. 1472 (1992).

[3] Mississippi, et al. v. Louisiana, et al., ___ U.S. ___, 113 S.Ct. 549, 121 L.Ed.2d 466 (1992).

[4] Houston, et al. v. Thomas, et al., 984 F.2d 642 (5th Cir.1993).

> Since the stakes are substantial to the parties and since the Defendants are political entities of the State of Louisiana, the attorney for the Port Authority requested the Court to stay further action in this case to give the State of Louisiana time to file a Motion in the Supreme Court requesting that court to exercise its original jurisdiction under Article III, Section 2 of the Constitution to decide the state location question. Such a decision would solve the choice of law problem for the Court, would expedite the ultimate resolution of the controversy, and would be the fairest method of resolving the fundamental issue for all parties.

13. This action is now in nearly identically the same posture as when originally commenced by private plaintiffs suing other private defendants in the District Court for the Southern District of Mississippi over certain land riparian to the Mississippi River on the Louisiana side (1986). The State of Louisiana is still seeking to determine its true legal boundary with the State of Mississippi in the vicinity of the disputed lands. Now, however, the district court cannot decide the boundary question and, as a consequence, cannot resolve the choice of law problem.

14. The land at issue lies along and constitutes a substantial portion of the west bank of the Mississippi River adjacent to Lake Providence, Louisiana. The Mississippi interests, known as the Houston Group, allege that they own the land as a result of a homestead patent issued by the United States in 1888 and a deed issued by Mississippi in 1933 to a 117.96 acre island. Louisiana and the Lake Providence Port Commission dispute these claims and seek a determination of the correct legal boundary between the two states, asserting that the area

claimed by petitioners is nothing but ordinary accretion to the bank.

WHEREFORE, the State of Louisiana respectfully prays that this Honorable Court take original jurisdiction and grant to plaintiff, State of Louisiana, leave to file its complaint in this Court, and that this Honorable Court issue an order directed to the United States District Court, Western Division of the Southern District of Mississippi, placing in abeyance all proceedings in the action entitled, *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B), pending the conclusion and determination of the matter set forth in this Complaint, and further prays for such orders and process as the Court may deem proper in pursuance of the annexed complaint and application for order.

Respectfully submitted,

RICHARD P. IEYOUB
Attorney General
State of Louisiana

JACK E. YELVERTON
First Assistant Attorney General
State of Louisiana

E. KAY KIRKPATRICK
Assistant Attorney General
State of Louisiana

GARY L. KEYSER
Assistant Attorney General

Office of the Attorney General
Lands and Natural Resources Section
11th Floor, DNR Building
P. O. Box 94095
Baton Rouge, LA 70804-9095
504-342-7900

No. ___ Original

In The

Supreme Court of the United States

October Term, 1993

STATE OF LOUISIANA,

Plaintiff,

v.

STATE OF MISSISSIPPI, et al.,

Defendants.

COMPLAINT

The State of Louisiana, appearing herein through the Honorable Richard P. Ieyoub, its Attorney General, acting pursuant to the authority and powers vested in him by Article IV, Section 8 of the Louisiana Constitution, institutes this original action against the State of Mississippi, and makes party hereto the following citizens of the State of Mississippi, namely, Julia Donelson Houston, Ruth Houston Baker and Hines H. Baker, Jr., Co-Executors and Co-Trustees of the Estate of George T. Houston, a/k/a George T. Houston, III, deceased, adult residents and citizens of Mississippi, and Ruth Houston Baker, individually, an adult domiciled in Harris County, Texas, and for its cause of action, states:

I.

The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States and Par. (a) Section 1251, Title 28, United States Code Annotated.

II.

The State of Louisiana was admitted into the Union of the United States of America by the Act of Congress found in chapter 50 of the United States Statutes at Large, vol. 2, page 701, approved April 8, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said Act, were described as follows:

"Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of 'Louisiana' by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three (8 Stat. at L. 200), between the United States and France, contained within the following limits, that is to say: 'Beginning at the mouth of the river Sabine; thence, by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast. . . . ' "

III.

By the Act of Congress found in the United States Statutes at Large, vol. 2, p. 708, chap. 57, approved April 14, 1812, additional territory was added to the then-existing State of Louisiana, which additional territory was described in the following language:

"Beginning at the junction of the Iberville with the river Mississippi; thence, along the middle of the Iberville, the river Amite, and of the lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl River; thence up the eastern branch of Pearl River to the thirty-first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence down the said river to the pace of beginning, shall become and form a part of the said state of Louisiana. . . . "

IV.

The territory lying adjacent to, and to the eastward of the state of Louisiana, is the State of Mississippi, which latter state was admitted into the Union of the United States of America by the Act of Congress, approved March 1, 1817, 3 Stat 348 (U.S. Statutes at Large, vol. 3, chap. 23, page 348), whereby the inhabitants of the western part of the then-Mississippi territory were authorized to form for themselves a state constitution and to be admitted into the Union, the boundaries of the then-to-be-created state being described as follows:

"Beginning on the river Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary

line to the Tennessee River; thence up the same to the mouth of Bear Creek; thence by a direct line to the northwest corner of the county of Washington 'Alabama'; thence due south to the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore to the most eastern junction of Pearl River with Lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning."

V.

The effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the channel or thread, sometimes known as the thalweg, of the Mississippi River as the original eastern boundary, as far south as the 31st degree of north latitude. Such original eastern boundary from the northeast tip of the State of Louisiana to said 31st degree of north latitude is common with the State of Mississippi.

VI.

Under the law of Louisiana, the State of Louisiana owns the bed of the Mississippi River to the boundary line of the States of Louisiana and Mississippi. Under the law of the State of Mississippi, the riparian owner owns to the boundary line between said states. This Supreme Court of the United States has original jurisdiction of suits to determine the boundaries between states, and of parties adversely asserting title to the property of a state.

VII.

Until recently the primary interest in the determination of the exact boundary line in the Mississippi River between the two states has been as to navigation and fishing rights, and to masses of land where an avulsion has taken place.

VIII.

On the 29th day of July, 1986, there was filed in the United States District Court, Western Division of the Southern District of Mississippi, a complaint entitled *Julia Donelson Houston, et al. v. Ruth M. Thomas, et al.*, Civil Action No. W86-0080(B). This Complaint To Remove Cloud filed against Louisiana residents and attacking the ownership of property of the State of Louisiana, raises the issue in this case as to the true location of the boundary between the States of Louisiana and Mississippi common to the Parish of East Carroll, Louisiana, and the County of Issaquena, Mississippi.

IX.

In the said action presently pending in the United States District Court as aforesaid, complainants claim ownership of a portion of lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Louisiana under its inherent sovereignty.

X.

The above referenced action filed herein is styled as a Complaint To Remove Cloud and identifies numerous

plaintiffs as the owners in fee simple of a certain tract of land purportedly lying in Mississippi, as against numerous defendants as residents and domiciliaries of the State of Louisiana.

XI.

Complainants in the district court recite their title as having derived from patents of the United States of America and subsequently recorded in Mississippi.

XII.

Complainants allege that Stack Island was affected by the divided flows of the Mississippi River into the natural erosion and accretion processes of the river, gradually migrating southward and westward.

XIII.

The State of Louisiana and the Lake Providence Port Commission, a political subdivision of the state, intervened in the federal district court action in June, 1987, asserting that their rights arise under the Constitution of the United States and an Act of Congress approved April 8, 1812, admitting the State of Louisiana into the Union of the United States of America, which act is found at 2 Stat 701 (U.S. Statutes at Large, Vol. 2, chap. 50, p. 701).

XIV.

The original complainants responded to the intervention and thereafter the State of Louisiana and the Lake Providence Port Commission filed a Third-Party Complaint against the State of Mississippi. The State of Mississippi answered the Third-Party Complaint.

Thereafter, the case followed the course set forth in detail in paragraphs 8 through 12 of the attached motion for leave to file a bill of complaint, having been rejected by this Court twice on earlier motions for original jurisdiction, then tried, appealed and heard on certiorari. This action is now in nearly identically the same posture as when originally commenced by private plaintiffs suing other private defendants in the District Court for the Southern District of Mississippi. The State of Louisiana is still seeking to determine its true legal boundary with the State of Mississippi in the vicinity of the disputed lands, which it owns.

XV.

The real question in dispute between plaintiff and defendants is the true location of the boundary line between the State of Louisiana and the State of Mississippi, which is dependent upon a determination of the location of both a frozen thalweg and the live thalweg, which follows the course of the Mississippi River itself as its bed and channel move with the gradual processes of accretion and erosion.

XVI.

However, the determination of this river boundary also involves an interpretation of the acts of Congress

setting forth the boundaries and determination of the boundaries between said two states, as well as the equal footing doctrine applicable to the states of the United States.

XVII.

Further, the Treaty of Peace concluded between the United States and Great Britain, September 3, 1783, 8 Stat 80, is also involved in this controversy, including an interpretation thereof as it affects or may affect such boundary between the State of Mississippi and the State of Louisiana, which can only be made pursuant to the Constitution of the United States and federal law.

XVIII.

Consequently, in the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Mississippi and Louisiana in the area at controversy becomes of major and substantial significance to the respective states, in view of the great value of the lands and water bottoms for navigational, hunting, fishing, timber and recreational purposes, as well the potential for the production of oil, gas and other minerals. Heretofore, it has not been necessary to determine with preciseness the exact location of such boundary line. This controversy now makes such a determination essential to the two sovereign states, as well as to their citizens.

XIX.

The property rights, the sovereign rights and the sanctity of the boundary between the States of Louisiana and Mississippi are inextricably involved in the litigation which commenced this controversy, thus instituted and pending in the United States District Court for the Western Division of the Southern District of the State of Mississippi, and said Court is not the forum proper to such determinations. Nor is the State of Louisiana required to submit its title to said Court, nor should it be.

XX.

The decision of the Supreme Court of the United States herein will be conclusively binding on all private parties and it alone has the power to fix and determine the boundary lines herein described. The suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.* should be stayed by Order of this Court until a final judgment herein can be had, and application is hereby made by the State of Louisiana for an Order to be issued by this Court, directed to the United States District Court, Western Division of the Southern District of Mississippi, staying all proceedings in said suit.

XXI.

The jurisdiction of the Supreme Court of the United States in boundary disputes between States is exclusive and original and, accordingly, it is appropriate that the suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.*, be stayed and all parties thereto be served with a copy

of the Stay Order herein applied for, and be given the opportunity to assert such interests as they may have in this action.

WHEREFORE, PREMISES CONSIDERED, Complainant prays:

1. That process issue herein to all parties as required by law.

2. That an order be issued promptly to the United States District Court for the Western Division of the Southern District of the State of Mississippi, staying any further proceedings in the suit of *Julia Donelson Houston, et al. vs. Ruth M. Thomas, et al.* C.A. No. W86-0080(B), on the docket of said Court, until final judgment has been rendered herein or until further order of this Court.

3. That, on final hearing hereof, the eastern boundary line of the State of Louisiana at its juncture or coterminous location with the western boundary line of the State of Mississippi in the vicinity of the navigable channel of the Mississippi River, common to the Parish of East Carroll, Louisiana and the County of Issaquena, Mississippi, should be fixed, recognized and determined.

4. That the claim of title asserted by Julia Donelson Houston, et al., in and to the lands and water bottoms described herein be herewith cancelled and forever held for naught.

And for such order and further relief, general or special, as may be proper.

Respectfully submitted,

RICHARD P. IEYOUB
Attorney General
State of Louisiana

JACK E. YELVERTON
First Assistant Attorney General
State of Louisiana

E. KAY KIRKPATRICK
Assistant Attorney General
State of Louisiana

GARY L. KEYSER
Assistant Attorney General

August 5, 1993

Office of the Attorney General
Lands and Natural Resources Section
11th Floor, DNR Building
P. O. Box 94095
Baton Rouge, LA 70804-9095
504-342-7900

BRIEF OF THE STATE OF LOUISIANA IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE ORIGINAL SUIT

OPENING STATEMENT

As set forth in the Motion for Leave to File Complaint annexed herein filed by the State of Louisiana, the proposed suit involves a determination of the exact location of a portion of the eastern boundary line of the State of Louisiana common with the State of Mississippi and the cancelling of the claims of certain named private parties to property rights of the State of Louisiana under the bed of the Mississippi River, as well as to accreted lands on and a part of the west bank, and to a land formation known as Stack Island.

I.

JURISDICTION OF SUITS BETWEEN STATES

The Supreme Court of the United States has exclusive original jurisdiction of all controversies between states. As set forth in Clause 2, Sec. 2, Article III of the Constitution:

> "In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

As set forth in Section 1251, Title 28, U.S.C.A. (a);

> "(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states."

II.

THE MOTION FOR LEAVE TO FILE SHOULD BE GRANTED

Jurisdiction vests since this is a suit between the States of Louisiana and Mississippi in which private persons are also proper parties due to the nature of the boundary dispute.

The value of the property involved is great. The rights of the State of Louisiana are real and substantial. The controversy exists and is justiciable. The Supreme Court of the United States is the only forum to settle this dispute, fix the boundary line between the states, and determine finally the rights of the parties. See *Florida v. Georgia*, 17 How. 478 (1854); *Oklahoma v. Texas*, 258 U.S. 574, 66 L.Ed. 771, 42 S.Ct. 409 (1922); *California v. Arizona*, 440 U.S. 59, 63, 99 S.Ct. 919, 922, 59 L.Ed.2d 144 (1979).

This court has entertained jurisdiction in such controversies on numerous occasions, and has done so in several prior Mississippi River boundary cases between Louisiana and Mississippi, as in *Louisiana v. Mississippi*, 202 U.S. 1, 50 L.Ed. 913, 26 S.Ct. 408 (1906); *Louisiana v. Mississippi*, 282 U.S. 458, 75 L.Ed. 459, 51 S.Ct. 197 (1931); and *Louisiana v. Mississippi*, 384 U.S. 24, 16 L.Ed.2d 330, 86 S.Ct. 1250 (1966).

The Court has held very recently, in this same case, that "the uncompromising language of 28 U.S.C. § 1251(a), * * * gives to this Court 'original and *exclusive* jurisdiction of all controversies between two or more States' (emphasis added)." *Mississippi, et al. v. Louisiana, et*

al., ___ U.S. ___, 113 S.Ct. 549, 553, 121 L.Ed.2d 466 (1992). Thus, the District Court was deprived of jurisdiction over Louisiana's third-party complaint against Mississippi. Though § 1251(a) is phrased in terms of a grant of jurisdiction to this Court, the plain meaning of "exclusive" necessarily denies jurisdiction of such cases to any other federal court. See, *e.g.*, *California v. Arizona, supra*. Therefore, the question of jurisdiction in this particular case has been put to rest: it is with this Court, and no other.

III.

POWER TO STAY

In the aid of its original jurisdiction, the Supreme Court has the power and authority to issue stays not only inherently but also by Sec. 1651(a), Title 28 U.S.C.A., which reads:

> "(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

See *Ex Parte Republic of Peru*, 318 U.S. 578, 87 L.Ed. 1014, 63 S.Ct. 793 (1943).

As stated in *Landis v. North American Co.*, 299 U.S. 248, 81 L.Ed. 159, 57 S.Ct. 163 (1936):

> "Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."

The Court has exercised its power to stay proceedings in other Mississippi River boundary cases, as in the recent case of *Louisiana v. Mississippi*, 466 U.S. 96, 80 L.Ed.2d 74, 104 S.Ct. 1645 (1984), and should so issue a stay in this case.

Respectfully submitted,

RICHARD P. IEYOUB
Attorney General
State of Louisiana

JACK E. YELVERTON
First Assistant Attorney General
State of Louisiana

E. KAY KIRKPATRICK
Assistant Attorney General
State of Louisiana

GARY L. KEYSER
Assistant Attorney General
Office of the Attorney General
Lands and Natural Resources Section
11th Floor, DNR Building
Post Office Box 94095
Baton Rouge, LA 70804-9095
504-342-7900

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

JULIA DONELSON HOUSTON, ET AL. PLAINTIFFS

VS. CIVIL ACTION NO. W86-80B

RUTH M. THOMAS, ET AL. DEFENDANTS

ORDER

(Filed June 11, 1993)

A Rule 16 status conference was held in this case on June 10, 1993, and was attended by Honorable Robert R. Bailess for the Plaintiffs and Honorable Calvin Adams, Jr. for the Fifth Louisiana Levee District. Honorable Gary L. Keyser for the Lake Providence Port Commission and other Defendants participated by telephone.

The Court discussed with the attorneys the opinion of the Supreme Court which reversed and remanded the case to the Circuit Court of Appeals for the Fifth Circuit which remanded to this Court. All parties agreed that since the rights of the parties to the land are controlled by state law and because there are substantial and material difference in the laws of Louisiana and Mississippi as they affect the issues in this case, that it will be necessary for this Court to determine whether the land lies in Louisiana or Mississippi.

The Court notes that earlier at trial it found that the land in question is a part of Mississippi but that the Fifth Circuit reversed this Court. The Supreme court granted certiorari on this question *inter alia* but did not rule on the

question, instead ruling that this Court was without jurisdiction to decide the state location question as it affected the states as parties. The Supreme Court held that this Court has jurisdiction to decide the state location question for purposes of deciding the ownership question as among the private parties.

It is thus unclear to this Court as to whether it should again make a determination of state location question, rely on its earlier determination of this question, or follow the opinion of the Fifth Circuit as the law of the case. The Court notes that if it follows the last option, the Plaintiffs were granted certiorari by the Supreme Court on the question but did not obtain a review. The Court further notes that under any of its options, any decision it makes could be rendered inequitable if the Supreme Court later decides to determine the state location question as a matter of its original jurisdiction.

Since the stakes are substantial to the parties and since the Defendants are political entities of the State of Louisiana, the attorney for the Port Authority requested the Court to stay further action in this case to give the State of Louisiana time to file a Motion in the Supreme Court requesting that court to exercise its original jurisdiction under Article III, Section 2 of the Constitution to decide the state location question. Such a decision would solve the choice of law problem for this Court, would expedite the ultimate resolution of the controversy, and would be the fairest method of resolving the fundamental issue for all parties.

Accordingly, all proceedings in this case are hereby stayed until August 2, 1993, to provide ample time for the

State of Louisiana to file its motion with the Supreme Court. The parties shall advise this Court by August 2, 1993, as to whether the motion has been filed and, if so, whether it has been granted or when a ruling might be expected. This report may be in simple letter form with a copy to the Clerk of Court for filing. If the Supreme Court accepts the state location question for decision, this stay will continue until the question has been finally decided and the parties will have the responsibility to inform this Court of the decision of the Supreme Court within five days of rendition of its opinion. If the Supreme Court does not decide the state location question, this Court will lift its stay and proceed in this case.

SO ORDERED this the 11th day of June, 1993.

/s/ William H. Barbour, Jr
CHIEF JUDGE